World Chronicle

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HUMAN RIGHTS

The International Covenant on Civil and Political Rights states that all people have the right to self-determination. It recognizes that everyone has the right to life, liberty and security. It prohibits torture, cruel or degrading treatment or punishment, and the arbitrary deprivation of life. The United Nations Human Rights Committee was established to monitor the implementation of the Covenant and its related Protocols in the territory of the 144 States Parties. In this edition of **World Chronicle,** Rajsoomer Lallah, a member of the UN's Human Rights Committee, talks about the Committee's work examining reports submitted by States Parties on their promotion and protection of civil and political rights.

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ANNOUNCER: From United Nations Headquarters in New York, this is **World Chronicle**, an unedited interview programme about major global issues.

Here now to introduce our guest is the host of today's **World Chronicle**.

LITTLEJOHNS: I'm Michael Littlejohns, and this is **World Chronicle**.

Recently, the United Nations Human Rights Committee held its sixty-eighth session at the UN Headquarters in New York. The Committee, established to monitor the implementation of the International Covenant on Civil and Political Rights, is a monitoring body that periodically examines reports submitted by the 144 States Parties on their promotion and protection of civil and political rights. The Committee's 18 members, independent experts, are persons of high moral character and recognized competence in the field of human rights and serve for a period of four years.

Our guest today is a member of the UN Human Rights Committee. He is Rajsoomer Lallah, a former Chief Justice of Mauritius. Joining me to talk with Mr. Lallah are Thalif Deen of *InterPress Service* and Bill Reilly of *United Press International*.

Mr. Lallah, welcome to **World Chronicle.** We like to have people of high moral character in this programme, so, welcome. You, I guess as the former Chief Justice of Mauritius, we should probably call you justice or judge but if you prefer Mr. Lallah, it's okay with us.

How much authority do the members of the Committee have, Judge, bearing in mind that you're appointed in your individual capacities as independent experts?

LALLAH: The important point is that we are elected by the States Parties and we are, of course, their elected monitoring members. We work in our individual capacity and as you know many of us, or if not all of us, are jurists working either as judges, professors, lawyers with the result that we become very familiar with the implementation of human rights in various fields. In fact, all the areas of activity which are covered by the Covenant on Civil and Political rights. You ask me about the authority which we have. Individually, we have none but as a committee we have established some kind of reputation in the sense that the views of the Human Rights Committee are taken into account by a number of courts in a number of countries, from the highest to the lowest. That is the measure of the success of the Human Rights Committee over the last quarter of a century since the Covenant came into force.

LITTLEJOHNS: Now, the parties to the Covenant who send you their reports on

what they perceive as their observance of the Covenant, are naturally they're going to put the best possible gloss on the situation. How do you guys determine whether they are just trying to pull the wool over your eyes and is window dressing all those bad things happening that are not being revealed?

LALLAH: Good question. Of course, there is one provision in the Covenant which says that states are required to submit reports on the factors and difficulties and also the progress which they have achieved in the implementation of Covenant rights. The reports are quite detailed. It takes into account the legislative framework, the administrative framework, and the actual situation in the country in respect of each and every right covered by the Covenant. Now, we get information from a number of sources – inter-governmental sources like the ILO, like UNHCR, which is the United Nations High Commissioner for Refugees, ILO. As you know the ....

LITTLEJOHNS: International Labour Organization.

LALLAH: .... and many other organizations. But we also have a lot of information from non-governmental organizations.

LITTLEJOHNS: Like Human Rights Watch, Amnesty International ...

LALLAH: But, of course, we have to be careful because we know that these are largely information, not necessarily untrue, but which are obtained from third party sources.

LITTLEJOHNS: And of course they also have a political agenda?

LALLAH: Some. But we are very careful to ensure that any allegations that are made are presented to the State Party and they are asked in the framework of their laws whether in the first place these situations are true and secondly how did they deal with them. There is also a different method and this is an internal method. When a country gives us an idea of the laws that exist in their country regarding the implementation of particular rights – for example, let us take the right to life – we ask, for example, whether the death penalty exists, how many persons have been executed, what are the recourses which a person condemned to death has, whether there is any movement towards the abolition of the death penalty and in this way we are able to see the situation on the ground. No state will give us false information about the number of executions in their state.

LITTLEJOHNS: You hope.

LALLAH: Because this is, I think, monitored in ways that are familiar to the people living in the country.

LITTLEJOHNS: But I mean in a huge country like China, for example, where executions take place for what would be considered in some countries relatively minor offenses, do you get the real numbers from China?

LALLAH: China is not a party to the Covenant.

LITTLEJOHNS: So that answers that.

LALLAH: But there are a number of other countries where the death penalty exists and which are parties to the Covenant and we question them. The US, for example, is a party to the Covenant. Its report was examined a number of years ago – four or five years ago, I think, if my memory serves me right – and we did asked questions about the death penalty. And I don't think a US representative would come on the rostrum to give us an incorrect figure.

DEEN: Judge, there are many developing countries, and I should say probably an overwhelming majority of them, who argue that the social and economic rights should take precedence over political rights. The argument is, what good is a free person in a democratic government if that is going to be on an empty stomach. What's your counter argument to this?

LALLAH: My argument is that the absence of wealth cannot justify a state from its duty to protect and preserve life; from protecting, promoting and preserving a number of basic freedoms. What good would it be to me if on a full stomach I'm unable to move from my home, I'm unable to say what I want to say, I'm unable to take part in the conduct of public affairs in my country either for electing representatives or being a member of parliament? What good is it if I am not protected from arbitrary detentions, from arbitrary killing and from repression? I do not think that these two categories of rights should be made to depend on each other. The poor man has a right to life as well as the rich man.

REILLY: Judge, you said that China was not part of the Covenant. Are there many other countries that are not party to – large countries?

LALLAH: I know that there are 144 parties to the Covenant on Civil and Political Rights. May I add something which is very important. We also have an Optional Protocol to the Covenant which enables an individual in any country to make a complaint to their Human Rights Committee and this complaint is dealt with in a judicial manner. The State is asked for explanations. The complainant is put in the presence of those explanations and answers and in the result of all the material that is gathered, the Human Rights Committee

gives its views in the matter. And the State Party has an obligation to give effect to these rules. Shall I give you a few examples? In the case of The Netherlands, there was clearly a case of discrimination against women in the allocation of social security benefits. There was a lady who complained and the Human Rights Committee took a long time to study the case and get information from both parties and came to the conclusion that the social security measures were discriminatory against women. And we asked the State to remedy the situation and it is in the process of doing so if it has not done so, already.

REILLY: You mentioned that it takes a judicial course when the complaints are lodged by individuals how does that work after your findings on them?

LALLAH: We have a method which we have devised of following up the matter and there is a special rapporteur on the follow-up of the implementation of views which have been adopted by the Committee. And as far as I can remember a number of states give effect to our views. Some of them have difficulties in doing so but clearly we have the duty as a committee to follow up what is happening after our views have been delivered. May I also add that it's not only as a result of views that we have a follow-up procedure. In our monitoring competence, that is when we examine the reports and come to certain conclusions, we adopt at the end of the examination of the report concluding observations and we are now in the process of working out how to follow up these conclusions. Since the States are required to report to us periodically, we think it is important as a committee that we should follow-up the situation instead of waiting for five years and when the next report comes, we take up those matters which have not been followed up and inquire into what factors and difficulties affect the implementation of the conclusions that we had reached after the examination of the report.

DEEN: Judge, reading through the committee report I find that the Committee usually expresses grave concern over certain actions taken by a country or human rights violations. How do you monitor this? I mean, you tell them to rectify it.

LALLAH: Yes.

DEEN: I mean, do you monitor and are there any strictures passed on these countries if they don't implement or if they don't rectify the situation?

LALLAH: Yes. I must say that states not only undertake an obligation to perform certain obligations by way of this treaty but no state would like to come every now and then -- every five years -- before the Committee and be faced with the same kind of ...

DEEN: It takes place every five years?

LALLAH: Yes. Normally every five years. But as I said, we are working out a procedure whereby a follow-up will be done in the conclusions and if there is sufficient progress we might even defer the consideration of the next report or in another case bring it forward.

REILLY: That seems like a long time ...

LITTLEJOHNS: Bill, just a moment please. This is **World Chronicle**. Our guest is Rajsoomer Lallah, a member of the UN Human Rights Committee. Okay, Bill.

REILLY: Sorry. I thought that five years was a long time for someone who might have a complaint lodged with the Committee.

LALLAH: Oh, the complaints procedure is not five years. The complaints procedure is only the Optional Protocol. The complainant sends a letter direct – and this is open throughout the year – and the Secretariat prepares an abstract of the case and we have a special rapporteur on new communications who works throughout the year. The Secretariat gets in touch with him in his country and sends him all the material and he decides, in the light of the information which has been gathered, whether the communication should go forward to the state for the state to give explanations not only as to whether the communication comes within the terms of the Covenant, but also whether, for example, the country concerned is a state party to the Optional Protocol, whether domestic remedies have been exhausted because we do not sit as a court of appeal on facts. We sit and review the case in the light of the Covenant obligations and it is our duty to ascertain whether the laws in that country give effect to the rights in the covenant and whether in the case of the particular individual concerned those rights have been properly dealt with.

LITTLEJOHNS: Judge Lallah, you have been involved in looking into alleged violations of human rights in Myanmar – formerly Burma – with a view to making a report, I think, to UN deliberative bodies. What's the situation there? Have you been able to go into Myanmar and when will your report be acted upon?

LALLAH: I was appointed as Special Rapporteur on the situation of human rights in Myanmar by the Commission on Human Rights, which is a different body from the Human Rights Committee we have been talking about. I have a mandate to present a report on that situation both to the Commission and to the General Assembly. I present my report at the session in March/April and to the General Assembly in November. I have not been allowed

so far to visit the country but I cannot frustrate the wishes of the Commission of the General Assembly by sitting quietly and wait for the good pleasure of the Government of Myanmar to receive me. I gather information from governments, from UN specialized agencies which operate in Myanmar, from other inter-governmental organizations and also from NGOs. What is more important is that I make it a point to assess the situation from direct testimony which I gather from people who come out of Myanmar. As you may know, there are about 120,000 refugees along the Thai/Myanmar border and I go to the jungles there to visit the various camps, the refugee camps and I talk to these people with a view to ascertaining what is the situation in Myanmar, why have they ran away from their country, what is the way in which they have been treated either by the army or otherwise. And from all this information I gather solid material with a view to present to the Commission and the General Assembly and by and large to the international community. Quite apart from this I, of course, do a careful study of the laws which apply in that country to see what are the developments, whether there is any move towards a democratic government in that country. As you know, Myanmar has for a great number of years been governed by a military regime with the people having no say in the conduct of public affairs, or in the conduct, or in the formulation or adoption of various economic and social policies. And this is the kind of situation I report on. And I also rely on a number of serious studies, for example, done by the World Bank or by various organizations in Southeast Asia.

DEEN: Will the government of Myanmar which did not allow you to go into the country, will it be given exercise of the right of reply to your report?

LALLAH: Oh, yes, they do. Of course the UN system, as you know, does not prevent this kind of a reply. The government must have a response and it is also very helpful for the membership of the Commission and of the General Assembly to know what is the other side of the story. And I can tell you that the government of Myanmar strongly contests what is contained in my report and they are given a hearing. But the simple answer is, if my report is incorrect why don't they allow me to visit the country?

LITTLEJOHNS: Good question.

REILLY: Judge, you've mentioned the Commission – Human Rights Commission – that was meeting in March in Geneva just about the time you were meeting in New York for the Committee. Will you explain the difference first between what the Committee does and your Commission?

LALLAH: The Committee - the Human Rights Committee – is a treaty body. It's only those states which are parties to the Covenant on Civil and Political Rights which are concerned by the monitoring functions of the Committee. And those states which have signed the Optional Protocol – ratified the Optional Protocol – they have obligations towards the Committee. The Commission on Human Rights on the other hand is an emanation of the Economic and Social Council of the UN. It is a body established under the Charter. It is a body which, for example, works out various human rights treaties, looks into various country situations and it has also a number of special rapporteurs which deal with certain themes. Thematic rapporteurs. Quite apart from that they have a lot of other work which I am not very familiar with.

DEEN: They have country rapporteurs too, right?

LALLAH: Yes. Like Myanmar, like Chile and like Iraq, I think, still on and Afghanistan, I think.

REILLY: But you don't have an opposite number on the Commission that is also reporting on Myanmar?

LALLAH: No.

REILLY: You're the only man for Myanmar?

LALLAH: Yes. I'm a special rapporteur of the Commission. It has nothing to do with my functions as a member of the Human Rights Committee.

LITTLEJOHNS: Judge Lallah, let's talk about Chile for a minute. You were doing some investigations in connection with what was going on under the dictatorship of General Augusto Pinochet I believe. Were you able to go into Chile at that time?

LALLAH: No. That happened, of course, a long time ago. I was Special Rapporteur on the situation of human rights in Chile. Again, a rapporteur of the Commission where I have the duty to report to the Commission and to the General Assembly in the same way as I report on Myanmar. Chile also did not agree to my going into the country with the result that I had to work out a system whereby I could get reliable information to put before the Commission and the General Assembly. In those days, it was easy enough to organize my work. I took various facets of civil and political activity in Chile and I had witnesses and lawyers who came to report either in New York or in Geneva. And on the basis of the testimony that I got I presented reports to the Commission and to the General Assembly.

DEEN: Judge, I noticed that the International Covenant on Civil and Political

Rights specifically says that all peoples have the right of self-determination, how is this viewed by countries which are fighting separatist movements?

LALLAH: In the Human Rights Committee we have always considered the right to self-determination in conjunction with a number of other provisions of the Covenant. For example, the exercise of civil and political rights or Article 27 of the Covenant which deals with the rights of ethnic, religious and cultural or linguistic minorities to enjoy among themselves, the right, for example to practice their religion, to speak their language among themselves and to exercise their cultural rights. Self-determination in this context, in the context of the Covenant, has been interpreted as meaning within the state. The Human Rights Committee, the Covenant on Civil and Political Rights is not a charter for the destruction of a state as a state.

DEEN: It is a politically sensitive issue.

LALLAH: It might be politically sensitive but as you know the Human Rights Committee has developed a reputation, may I say, for not playing cheap politics. What we look at is your rights enshrined in the Covenant, how they are implemented in each and every state with due regard to the rights of everyone in the state whether it is a minority or a majority or a multi-ethnic country. And we have several of them in the world that is as a result of past history of colonialism and the rest.

REILLY: Judge, I should think that you are not very welcome in a lot of places when you are looking for the human rights bothers is this a general rule that you don't get invited to a lot of places – a lot of countries I'm talking about?

LALLAH: The monitoring functions do not involve visits to countries. The monitoring functions of the human rights contained here – we must make a clear distinction between the work of the Committee and the work of the Commission. The work of the Committee consists in meeting either in Geneva or in New York three times a year to consider the reports of states parties, examine them in public when they send their representatives. And we have an agenda of which countries are coming, which countries have submitted their reports and we don't have to go to these countries. But, of course, sometimes we are invited to countries but I guess the UN does not have funds to enable the Committee to go to each and every country and doing on-the-site visit as it were.

LITTLEJOHNS: Well, Judge Lallah, you're always welcome on this programme but that's all the time we have. Thank you for being with us on this edition of **World**

Chronicle.

Our guest has been Rajsoomer Lallah, a member of the UN Human Rights Committee. He was interviewed by Thalif Deen of *InterPress Service* and William Reilly of *United Press International*.

I'm Michael Littlejohns. Thank you for joining us. We invite you to be with us for the next edition of **World Chronicle.**

ANNOUNCER: Transcripts of the programme may be obtained free of charge by sending a stamped, self-addressed envelope to **World Chronicle**, United Nations, Room S-827L, New York, N.Y., 10017.

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